

Downtown Development Guide

June 9, 2006

Prepared By: Daniel Dalton

*Tomkiw Dalton, plc.
321 Williams Street
Royal Oak, MI 48067
248 591-7000
www.tomkiwdalton.com
ddalton@tomkiwdalton.com*

Downtown Development Guide
How to Establish and Finance a DDA

By: Daniel P. Dalton
Tomkiw Dalton, plc
ddalton@tomkiwdalton.com

What DDA's Are

Downtown Development Authorities, or “DDAs,” are authorities created by a municipality for purposes of economic development. Whether a city, village, or township is faced with blight or merely wants to boost its economic growth, a DDA can help. The laws governing DDAs are set out in MCL § 125.1651 et. seq also known as Public Acts 197. If you are considering a DDA you absolutely have to get a copy of this Act and read it carefully. (Please see attached Act). While the Act may be a bit dry in parts, it is vital to read and follow its provisions in order to create a successful DDA.

How to Form a DDA

To create a DDA the governing body of a municipality must first find that a DDA is necessary to “halt property value deterioration and increase property tax valuation where possible in its business district, to eliminate the causes of that deterioration, and to promote economic growth” See MCL 125.1653. Once a municipality makes this determination it needs to pass a resolution to declare its intention to create a DDA.

After a resolution is passed a public hearing should be scheduled regarding the adoption of the proposed DDA ordinance and designating its boundaries. This public hearing is subject to strict notice requirements and it is recommended that a would-be DDA board consult the statute (MCL 125.1653). The notice requirements are as follows:

- Post Notice in newspaper on two occasions at least twenty days before the hearing but no sooner than 40 days. In other words, posting an advertisement in a newspaper 41 days before the scheduled hearing is improper under the Act.
- At least twenty days before the hearing, the municipality must mail notices to all property taxpayers in the proposed district.
- At least twenty days before the hearing, the municipality must mail notices by certified mail to the governing body of each taxing jurisdiction levying taxes that would be subject to capture if the authority is established and a tax increment financing plan is approved.
- Post notices of the public hearing in at least twenty “conspicuous and public places” at least twenty days before the hearing.

- Make sure the notice states: the date, time, and place of the hearing and that it sets out the boundaries of the proposed downtown district.

Once the notice requirements are met the public hearing can take place. ***Please note that the governing body must amend undergo the same process noted above to alter or amend the ordinance and authority.*** MCL 125.1653(5).

Checklist did your municipality:

1. Determine a DDA is necessary?
2. Pass Resolution to create a DDA?
3. Schedule a public hearing on DDA creation?
4. Post Notice twice in a newspaper at least 20 days in advance of public hearing?
5. Mail notice of hearing to property tax payers in the district at least 20 days ahead of time?
6. Mail notice of hearing to the governing body of each taxing jurisdiction levying taxes in the district?
7. Post notice in 20 public places?
8. Have any taxing jurisdictions opted-out of the tax capture plan after the public hearing?
9. Did the municipality vote, by a majority, to adopt the ordinance establishing the DDA 60 or more days after the public hearing?

Governing Board

Once a DDA is formed a governing board must be selected. The Board must be composed of a chief executive officer and between eight to twelve members, a majority of whom must have a property interest in the downtown district and at least one member must reside in the district. If a municipality's population is fewer than 5,000 the Planning Commission can double as the DDA Board. In the case of a Township, members are appointed by the supervisor and approved by the township board.

Once the board is up and running it may hire a director, treasurer, secretary, and legal counsel. The director must swear a constitutional oath and furnish a bond. The director cannot be a member of the board and serves at the pleasure of the board. See generally MCL 125.1655.

Now that we have a DDA, what do we do?

The powers of a DDA board are set out in MCL 125.1657. Under this law a DDA needs an action plan to spend the money. You can prepare an analysis of the economic changes occurring in the district and the impact of metropolitan growth on the district. DDAs can be used for, but are not limited to, any of the following purposes:

- To provide a forum for its members on revitalization issues;
- To educate its members, the general public, State legislators and other public officials about the best tools for the improvement of the communities’
- To promote and encourage the implementation of effective, comprehensive legal and financing instruments to further such improvement;
- To study current legislation and develop new legislation strategies;
- To perform studies on the effectiveness of revitalization efforts;
- To assist member communities in interacting and networking with one another;
- To work cooperatively with other statewide agencies to further downtown development.

See the Michigan Downtown Associations Website, <http://www.michigandowntonwns.com/1/mda/index.asp> (last visited May 1, 2006).

In addition to the some of the general goals noted above, The DDA can build or renovate buildings in the district, and enter into contracts to aid in the economic development of the district. The board may also develop long range plans to halt property value deterioration or focus on the identity, infrastructure, transportation, housing, community services, and sustainability, of their particular downtown. Of course, the goals of each DDA should be tailored to the needs of that particular community.

How do we finance our new DDA?

MCL 125.1661 authorizes the financing methods that may be used by a DDA. A DDA may levy an ad valorem tax of up to two mills on property within the downtown district—or in plain English, a value based tax of up to two tenths of a cent. The DDA may also borrow money, issue tax-exempt revenue bonds to finance property purchases or construction costs. In addition, a special assessment district may be created to assist in streetscape projects, as well as to establish adequate parking to serve the downtown development area.

Perhaps the most useful financing tool, as well as the most complex, is the Tax Increment Financing (“TIF”) scheme. The TIF plan allows a DDA to “capture” the difference in property value growth between that collected in the previous year and the revenue of the current year. For example, If the "initial" year (same as "base" year) value

for the plan equals \$1,000,000. If, during the second year, the value increases to \$1,250,000 then the authority may "capture" the property taxes on the increase in value, i.e., the "tax increment", of \$250,000. This means the authority gets to keep the property taxes on the \$250,000 to pay for the plan projects. The taxing units receive the taxes on the \$1,000,000. If the DDA did not capture these taxes the money would go to other governmental entities and the money probably would not be spent on the community. To implement Tax Increment Financing a DDA must first prepare a development plan and a TIF plan—but these need not be separate documents—which details where the tax money will go (see MCL 125.1667 for details). This plan must be created by ordinance and is subject to the notice and public hearing requirements of the DDA Act. *See* MCL 125.1668.

A financing strategy is crucial to the success of a DDA. A DDA should look carefully at the DDA Act regarding financing in order to fully and properly fund its operations. There are, however, some funding options to consider which are not mentioned in the Act. For instance, a DDA should analyze whether any MDOT grants are available. If certain conditions are met, MDOT may provide Enhancement grants to partially pay for improvements to sidewalks, tree plantings, and, of course, road work. In addition, a DDA should find out if it is eligible for a Community Development Block Grant (CDBG) administered by the Michigan Economic Development Corporation (MEDC). Some communities may also be eligible to receive money from the DNR or DEQ as well as the Main Street Program or possibly Historic District tax credits. The key is to research these matters and inquire as to eligibility.

No matter what financing steps are taken, it should be remembered that DDAs are required to keep detailed financial records. A DDA must submit annual budgets and is audited annually. If the DDA is utilizing a TIF it must report on the status of the TIF account each year as well.

Other Resources for DDA's

The Michigan website has lots of valuable information on the minutiae of running and financing a DDA, including frequently asked questions section:

<http://www.michigan.gov/treasury/0,1607,7-121-3218---F,00.html> (last viewed May 1, 2006)

and

Details on the tax increment financing scheme can be found at:

<http://www.emich.edu/public/geo/557book/d232.tif.html> (last viewed May 1, 2006)

For other Financing Information see:

Nancy L. Minter. "Tax Increment Financing." *Urban Land*. May 1991.

"Tax Increment Financing." Tschangho John Kim, Clyde W. Forrest and Karen A. Przepyszny. *Planning Advisory Service Report Number 389*, American Planning Association. 1985.

"Financing Downtown Development Projects," Jim Collison and Randy Frykberg, PhD. *Michigan Municipal Review*, June 2001.

"The Downtown Development Authority—A Useful Tool for Township Economic Development," William K. Fahey, *Michigan Township News*, Vol. 46, No. 5, June 2004.

For copies of all the Acts pertaining to Downtown Development Authorities, one should contact the State Law Library, 525 W. Ottawa, PO Box 30007, Lansing, MI 48909, phone (517) 373-0630, fax (517) 373-3915, Email: lmlawlib@libofmich.lib.mi.us. There is a small charge for this service.

- Downtown Development Authorities (P.A. 197 of 1975)
- Tax Increment Finance Authorities (P.A. 450 of 1980)

Prepared by: Daniel Dalton

Tomkiw Dalton, plc
321 Williams Street
Royal Oak, MI 48067
(248) 591-7000
(248) 591-7790

www.tomkiwdalton.com